

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

ENBRIDGE ENERGY,

Plaintiff,

vs.

Case No. 2013-2704-CC

RANDALL RUSS AND LINDA RUSS,
TRUSTEES OF THE RUSS FAMILY
REVOCABLE TRUST, MICHIGAN
DEPARTMENT OF TREASURY, GREAT
LAKES GAS TRANSMISSION LIMITED
PARTNERSHIP, and DTE ELECTRIC
COMPANY,

Defendants.

ENBRIDGE ENERGY,

Plaintiff,

vs.

Case No. 2013-2705-CC

MICHAEL F. STAHL and JEANETTE R. STAHL,

Defendants.

ENBRIDGE ENERGY,

Plaintiff,

vs.

Case No. 2013-2706-CC

RICHARD W. WAHL and WILMA G. WAHL,

Defendants.

ENBRIDGE ENERGY,

Plaintiff,

vs.

Case No. 2013-2750-CC

RANDALL RUSS and LINDA RUSS,
TRUSTEES OF THE RUSS FAMILY
REVOCABLE TRUST, MICHIGAN
DEPARTMENT OF TREASURY,
PTERADON ENERGY, LLC, and
DTE GAS COMPANY,

Defendants.

ENBRIDGE ENERGY,

Plaintiff,

vs.

Case No. 2013-2751-CC

RANDALL RUSS AND LINDA RUSS,
TRUSTEES OF THE RUSS FAMILY
REVOCABLE TRUST, MICHIGAN
DEPARTMENT OF TREASURY, GREAT
LAKES GAS TRASMISSION LIMITED
PARTNERSHIP, PTERADON ENERGY, LLC
and DTE GAS COMPANY,

Defendants.

ENBRIDGE ENERGY,

Plaintiff,

vs.

Case No. 2013-2752-CC

RANDALL RUSS AND LINDA RUSS,
TRUSTEES OF THE RUSS FAMILY
REVOCABLE TRUST, MICHIGAN
DEPARTMENT OF TREASURY, GREAT
LAKES GAS TRASMISSION LIMITED
PARTNERSHIP, PTERADON ENERGY, LLC
and DTW GAS COMPANY,

Defendants.

OPINION AND ORDER

The individual/trustee Defendants (collectively, “Movants”) have filed motions for partial declaratory judgment in each of the six above-captioned cases. Plaintiff has filed a response to each motion and requests that the motions be denied. Movants and Plaintiff have each filed a reply in support of their respective positions in each of the six cases.

Facts and Procedural History

On January 31, 2013, the Michigan Public Service Commission entered an order (“MPSC Order”) authorizing Plaintiff to replace, design, construct, install, test, operate, maintain, repair, and own certain replacement segments of an existing crude oil and petroleum pipeline (“2014 Pipeline”). (See Plaintiff’s Exhibit 1, the MSPC Order.) Plaintiff’s existing pipeline, the Line 6B pipeline (the “1969 Pipeline”), originates in Indiana and traverses Michigan on its way to Sarnia, Ontario.

The 1969 Pipeline was installed, and is currently maintained, pursuant to easements granted to Plaintiff’s predecessor in interest, and against Movants’ predecessors in interest, in 1969 condemnation orders (“1969 Orders”). (See Plaintiff’s Exhibit 2.) The 1969 Orders authorized Plaintiff’s predecessor in interest to take possession of the properties for the purposes of “constructing, maintaining, and operating” an oil pipeline. (Id.)

At the hearing held prior to the MPSC Order being entered, Plaintiff’s personnel testified that Plaintiff “is not planning to remove the [1969 Pipeline] segments that are being replaced.” (See Plaintiff’s Exhibit 1.) Rather, Plaintiff’s personnel explained that Plaintiff planned to deactivate and maintain those segments consistent with its rights under the 1969 Order. In the MPSC Order, the MPSC concluded that “[Plaintiff’s] decision to place the new line alongside the existing pipeline makes the most sense and is the best solution.....[A]dhering to the existing

route takes the greatest advantage of earlier pipeline improvements along Line 6B, which were previously approved by the Commission.” (Id.)

After receiving the MPSC Order, Plaintiff sought to obtain the necessary property rights. After its “good faith offers” were rejected by Defendants, Plaintiff filed its complaints in these matters under Public Act 16 of 1929, MCL 483.2 *et seq* (“Act 16”) and the Uniform Condemnation Act, MCL 213, *et seq* (“UCPA”).

On or about June 9, 2014, Movants filed their instant motions for partial declaratory judgments. Specifically, Movants seek declaratory judgments declaring: (1) That the 1969 Orders are terminated and ordering Plaintiff to immediately file a discharge of the 1969 Orders as it applies to the Movants’ properties, and (2) That the 1969 Pipeline shall be removed as soon as the 2014 Pipeline is operational. Plaintiff has filed a response and reply to each motion. Movants have also filed a reply to each of Plaintiff’s responses.

Arguments and Analysis

In their motions, Movants first assert that they retain any rights not taken by the 1969 Orders. Specifically, Movants contend that the 1969 Orders grant Plaintiff the right to construct, maintain and operate the 1969 Pipeline, but did not grant Plaintiff the right to abandon it in place. However, Plaintiff asserts that it is not abandoning the 1969 Pipeline; rather, Plaintiff states that it has elected to maintain the 1969 Pipeline in addition to constructing the 2014 Pipeline. Indeed, the MPSC acknowledged in the MPSC Order that Plaintiff would not be removing the 1969 Pipeline, but rather installing a new pipeline while maintaining the 1969 Pipeline. (*See* Plaintiff’s Exhibit 1.) The MPSC’s acknowledgment is consistent with Plaintiff’s representations in their applications. (*See* Plaintiff’s Exhibit 4.)

In addition, the federal regulations on point define “abandoned” as “permanently removed from service.” 49 CFR § 195.2. In this case, while Plaintiff does not have any plans to return the 1969 Pipeline to service it has not ruled out that possibility. Moreover, Plaintiff’s continuing maintenance of the 1969 Pipeline indicates that it does not intend, at least at this point in time, to permanently remove it from service. For these reasons, the Court is convinced that Plaintiff’s activities in connection with the 1969 Pipeline fall within their rights under the 1969 Orders. Consequently, Movants’ motion must be denied.

Conclusion

Based upon the reasons set forth above, Movants’ motions for partial declaratory judgment are DENIED. This Opinion and Order neither resolves the last claim nor closes the case. *See* MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: November 25, 2014

JCF/sr

Cc: *via e-mail only*
Christopher A. Cornwall, Attorney at Law, cbennett@dickinsonwright.com
Norman D. Beauchamp, Attorney at Law, nbeauchamp@porthuronlaw.com
Kimberly L. Savage, Attorney at Law, ksavage@savagelawplc.com
Lawrence M. Scott, Attorney at Law, lscott@orlaw.com